

# Air Force Communications Agency



## **THE MONITOR'S GUIDE: THE PRIVACY ACT & FREEDOM OF INFORMATION ACT PROGRAMS**

*The Release and Control of:*

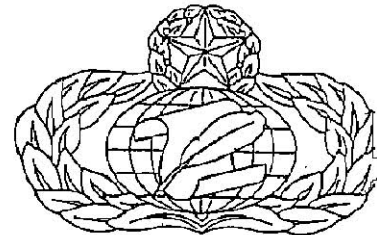
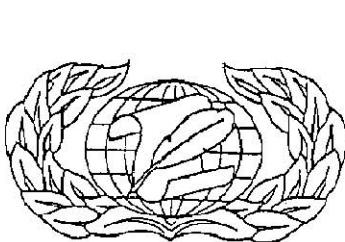


*information*



*to the public*

**INFORMATION MANAGEMENT - OUR SPECIALITY!!**



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## I. PURPOSE



comments or changes can be added to it.

This guide is designed to assist monitors in understanding the Privacy Act (PA) and the Freedom of Information Act (FOIA) Programs. It further explains the monitor's responsibilities in processing requests for information and develops job-level competence with its references and explanations. The monitor is responsible to stay current with changes and supplements as they are published. This handout has been developed so that

## II. RESPONSIBILITIES

The Privacy Act (PA) or the Freedom of Information Act (FOIA) Monitor is responsible for monitoring the PA or FOIA program within the organization or major functional area. This person serves as liaison with the Agency PA and FOIA Program Manager located in the Information Management Element.

### A. PA monitors must ensure that:

1. They have access to and working knowledge of AFI 33-332 (29 Jan 04).
2. Personnel within their organization know who the PA monitor is. Individuals know their rights and responsibilities under the PA.
3. Directors or Division Chiefs are provided guidance on the proper processing of PA requests.

### B. FOIA monitors must ensure that:

1. They have access to and a working knowledge of DoD 5400.7-R (29 Sep 97) supplemented by AF (24 Jun 02) and AFI 33-332.
2. The FOIA request is processed IAW procedures in DoD 5400.7-R supplemented by AF.

3. Exempt records are identified and exemptions are stated in the OPR's recommendation memo/letter/document with two copies of each record needed to process the FOIA request. **At no time are original documents released for a FOIA request!** Even computer listings are copied with the copies released to the requester! If the requester has asked for an electronic record and release by electronic media, provide two copies one sanitized and unsanitized version of the record copy.



4. Fees are assessed as outlined in DoD 5400.7-R, starting at para C6.2. The DD 2086 or DD 2086-1 must be filled out by the OPR (AP9.2.6.1) of the documents and used to determine assessment of applicable fees.

### III. PROGRAM DIRECTIVES



- A. **Freedom of Information Act Program – DoD 5400.7-R:** Explains policies and outlines procedures on disclosure of records, establishes mandatory time limits, and explains how the public may get copies of records. Listed are specific policies on withholding records that are exempt from release to the public. This regulation also deals with "For Official Use Only" (**FOUO**) records. Changes are being made to include electronic records and release by electronic media. Watch for information releases to monitors. Copy at the following web site <https://www.defenselink.mil/pubs/foi/>

- B. **Privacy Act Program - AFI 33-332:** Explains policies and outlines procedures that govern collecting personal information and safeguarding, maintaining, using, accessing, amending, and disseminating personal information kept by the Department of the Air Force systems of records. It applies to all Air Force activities, including Reserve Components, except Office of Chief, National Guard Bureau; Air National Guard technicians; and Army-Air Force Exchange Service activities, including Motion Picture Service activities. It does not apply to civilian employee records that are maintained by Air Force activities and are covered under the Office of Personnel Management system of records. Copy at the following web site <https://afpubs.hq.af.mil>

### IV. PERSONAL ACCESS UNDER THE PRIVACY ACT



Individuals have the right to know what records the Air Force is keeping on them. They must have access to review or get copies of those records. This is subject to exemptions authorized by law that are approved by the Secretary of the Air Force and published in AFDIR 37-144 (and the *Federal Register*). (See AFI 33-332, para 4.1 for detailed explanation of policy.)

### V. PERSONAL INFORMATION UNDER THE PRIVACY ACT

Defined as information about an individual that is not a matter of public record and is usually considered to be personal to the individual such as: SSN, home address, home phone, date of birth, etc. (See AFI 33-332, para 9.1 and 9.2 for detailed explanation of terms used.)

## VI. SYSTEMS OF RECORDS UNDER THE PRIVACY ACT

Defined as a group of government records published in the *Federal Register* from which personal information is retrieved by the name of the individual or by some personal identifier, such as individual's social security number.

## VII. JUDICIAL SANCTIONS UNDER THE PRIVACY ACT



The Privacy Act has both civil remedies and criminal penalties for violations of its provisions.

A. **Civil Remedies:** An individual may file a civil suit against the Air Force if Air Force personnel fail to comply with the Privacy Act.

B. **Criminal Penalties:** A member or employee of the Air Force may be found guilty of a misdemeanor and fined not more than \$5,000 for willfully (para 1.2):

1. Maintaining a system of records without first meeting the public notice requirements explained in AFI 33-332, para 6.2.
2. Disclosing individual identifiable personal information to a person who is *not* entitled to it.
3. Asking for or getting another person's record under false pretenses.

## VIII. PROTECTING RECORDS UNDER THE PRIVACY ACT



Activities that operate a system of records must set rules of conduct, operating procedures, and physical safeguards to keep the records safe from unauthorized disclosure (AFI 33-332, para 7.1). The level of protection should be the same as the level of sensitivity of that information.

## IX. PRIVACY ACT STATEMENT (PAS)

If the information requested by a federal agency would be releasable under the Freedom of Information Act (See DoD 5400.7-R and AF Sup), there is no requirement to give the individual a PAS (some examples of this kind of information are: name, grade, organization, duty assignment, and official telephone number). The PAS is not required for collection of information that is not made a part of a federal system of records. In all other cases, give the individual information about themselves a PAS (See AFI 33-332, para 3.2). Keep in mind; you need a PAS when asking a person for information covered by the PA. It is *not* required if you take information from another federal record system.

## X. PRIVACY ACT REQUEST



A request (may be verbal or written) from an individual for information about the existence of, access to, or amendment of, a record about them is in a system of records. The written request must cite or indicate a reliance on the Privacy Act. It is a personal request, therefore it cannot be on official Air Force letterhead. **NOTE:** *Immediately upon receipt of the written request, it should be hand carried to the Agency Privacy Act Manager (Information Mgt Element, Rm 1004) for coordination and tracking. Individuals confuse the Privacy Act (PA) with the Freedom of Information Act (FOIA). Regardless of whether an individual cites or implies the PA or the FOIA, the written request must be processed in order to*

*give the most releasable information possible. This may mean processing part of the request under one act and part under the other.*

### A. PROCESSING PA REQUESTS

1. Verify the requester's identity through ID card (*in person*) or signature (*written requests*).
2. Tell the individual if the system of records has information concerning them (*may be by verbal*). Identify the time and place where the information can be reviewed.
3. Let the individual review the record and/or obtain a copy, unless it is exempt and listed in AFI 33-332, Attachment 3, GENERAL AND SPECIFIC EXEMPTIONS.

### B. TIME LIMITS IN PROCESSING PA REQUESTS

1. Notify the requester of records existence - *within 10 workdays*.
2. Allow the requester to review or obtain a copy of the record - *within 30 workdays*.

*NOTE: If the 10 workday time limit cannot be met, send a letter to the requester telling why a delay is needed and give an approximate response date. That date should be no more than 20 workdays after the first Air Force office receives the request.*

C. **ASSESSING FEES:** When providing documents under the Privacy Act, fees for reproduction only are charged. Use the fee schedule in AFI 33-332, para 4.3. Do not waive the fee when a previous waiver has been granted and subsequent requests appear to be an extension or duplication of the original request.

## XI. FREEDOM OF INFORMATION ACT (FOIA) REQUEST



A written or email request from an individual acting on their behalf, a company, or an organization requesting information or copies of AF records by stating or implying the FOIA. One of the first determinations is the status (commercial, educational institution, noncommercial scientific institution, representatives of the news media, or "all other") or the purpose of the requester for the fee assessment "category" as outlined in para 6, DoD 5400.7-R. A new ***Electronic Freedom of Information Act Amendments of 1996*** is in effect. Basically this allows release of records held electronically, allows computer redaction, but requires the amount of information deleted on a released record to be released with the record. A web site reading room is available by any agency that believes it may be subject to subsequent requests for certain information.

### A. PROCESSING A FOIA REQUEST

1. Immediately hand carry to Agency FOIA/PA (CCQIM) for processing.
2. When tasked by FOIA/PA mgr, determine if documents are available. If "no records" see DoD 5400.7-R as supplemented by AF to validate search efforts. The OPR recommendation letter will state the efforts/reasons why a "no records" status.
3. The fee assessment status of requester is usually determined from the content of the request letter. The OPR may recommend waiver of assessed fees.
4. Determine if documents are exempt from release to public. The OPR recommendation letter *must* give the exemption and why the exemption.
5. Process the request by copying (2 copies of each) the original records, make a list of records submitted, mark exemptions on each one-sided copy using a **blue highlighter** to line-out the exempted information, and list the exemptions on the OPR chief's recommendation letter. The second copy of the requested records ***without marks*** has a cover list of the records when more than one document is involved. The original records are not forwarded. They are kept by the OPR. Electronic records can be released to the requester via e-mail.
6. Return the package with the OPR chief's signature on the OPR recommendation letter to FOIA Mgr thru AFCA's JA for legal review.

### B. TIME LIMITS IN PROCESSING A FOIA REQUEST

1. FOIA Mgr will notify the requester of receipt of the request and the status of the requested documents (release, no records, or transfer; for partial or full denial records AFCA/CC will sign memo) - ***within 20 workdays***.
2. FOIA Mgr will process the request for release or transfer - ***within 20 workdays***.